

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

April 4, 2000

DUKE ENERGY TRADING AND
MARKETING, L.L.C.

Docket No. 2000-250

Application for License to Operate as a
Competitive Electricity Provider

ORDER GRANTING LICENSE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we license Duke Energy Trading and Marketing, L.L.C. to operate as a competitive electricity provider in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On March 15, 2000, Duke Energy Trading and Marketing, L.L.C. (DETM) applied to the Commission for a license to operate in Maine as a competitive electricity provider, as provided in Chapter 305. On March 28, 2000, DETM filed additional information to supplement its earlier filing.

A. Type of Service Proposed

DETM proposes to sell electric service to the public at retail as a competitive electricity provider. DETM's application states that the proposed licensee plans to market "energy, installed capacity and related ancillary services to industrial customers" in the transmission and distribution utility service territory of Central Maine Power Company. DETM stated it will not serve commercial or residential customers.

B. Fee Paid

With its application, DETM paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

III. FINANCIAL ISSUES

A. Security

DETM will operate as a competitive electric provider offering retail service only to customers with a demand greater than 100 kilowatts in Maine. Pursuant to section 2(B)(1)(a)(i) of Chapter 305, DETM does not have to furnish a security instrument to the Commission.

B. Showing of Professional and Financial Capability

DETM will operate as a competitive electric provider offering retail service only to customers with a demand greater than 100 kilowatts in Maine. DETM provided information to demonstrate its financial capability to engage in its proposed business as required by section 2(B)(1)(a)(ii) of Chapter 305. We have reviewed that information and find that it complies with the requirements of Chapter 305.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

DETM, as a competitive electricity provider in Maine, must demonstrate it has the technical ability to enter necessary interconnection arrangements or contracts with Maine utilities, pursuant to section 2(B)(2)(a) of Chapter 305. In its application, DETM provided information demonstrating its ability to enter into such arrangements or contracts, although it stated it had not yet reached such agreements. Accordingly, DETM shall not act to enroll customers or provide generation service until all required contracts have been executed consistent with Commission rules. DETM shall notify the Commission when all such contracts have been executed.

Section 2(B)(2)(b) of Chapter 305 requires an applicant to demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity meeting all applicable requirements for the bulk power system control area in which the applicant would provide service. DETM filed information to demonstrate its technical capability to meet that requirement within the NEPOOL/ISO-NE portion of the Northeast Power Coordinating Council control area. We have reviewed that information and find that it complies with the requirements of Chapter 305. DETM also documented that it will meet the NEPOOL transaction provisions required by section 2(B)(2)(b)(ii) of Chapter 305.

B. Resource Portfolio

DETM, as a competitive electricity provider in Maine, pursuant to section 2(B)(4) of Chapter 305, must demonstrate its ability to meet the resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules. DETM filed supporting information to demonstrate its ability to meet these requirements. We have reviewed that information and find that it complies with the requirements of Chapter 305.

V. CONSUMER PROTECTION ISSUES**A. Showing of Fitness**

In its application, DETM provided information required by Chapter 305 section 2(B)(3) related to enforcement proceedings and customer complaints. We have reviewed that information and find that it meets the requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

DETM will operate as a competitive electric provider offering retail service only to retail customers with a demand greater than 100 kilowatts in Maine. Pursuant to section 2(B)(6) of Chapter 305, DETM is not required to demonstrate its ability to comply with applicable consumer protection requirements.

C. Do-Not-Call List

Chapter 305 section 4(I) states that "[t]he Commission will maintain or cause to be maintained a 'Do-Not-Call' list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers." We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, DETM shall comply with the following requirements.

DETM must comply with the requirements of the Telephone Consumer Protection Act,¹ the Telemarketing and Consumer Fraud and Abuse Prevention Act,² and related rules of the Federal Communications Commission³ and Federal Trade Commission.⁴ DETM must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all intrastate and interstate telemarketing of Maine consumers, including both residential and business customers.

¹47 U.S.C. § 227

²15 U.S.C. §§ 6101-6108

³47 CFR 64.1200

⁴FTC Telemarketing Sales Rule, 16 CFR Part 310

DETM shall not telemarket to Maine customers on that list, as required in Chapter 305 section 4(l)(1). DETM shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. DETM shall provide a copy of that list to the Commission upon request.

Further, each month, DETM must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁵ DETM shall not telemarket to Maine customers on that list, as required in Chapter 305 section 4(l)(1).

VI. ADDITIONAL PROVISIONS

DETM must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. DETM must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. license Duke Energy Trading and Marketing, L.L.C. to operate as a competitive electricity provider pursuant to Chapter 305 of the Commission's Rules, to offer retail service only to customers with a demand greater than 100 kilowatts in the service territory of Central Maine Power Company in Maine;
2. order Duke Energy Trading and Marketing, L.L.C. to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers; and
3. order that this license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules.

⁵Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

Dated at Augusta, Maine, this 4th day of April, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.